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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,009	03/24/2004	Edwin McGlumphy	18525/04065	5677

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CALFEE HALTER & GRISWOLD, LLP  
800 SUPERIOR AVENUE  
SUITE 1400  
CLEVELAND, OH 44114

EXAMINER
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WERNER, JONATHAN S

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 04/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/808,009	<b>Applicant(s)</b> MCGLUMPHY ET AL.	
	<b>Examiner</b> Jonathan Werner	<b>Art Unit</b> 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 October 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

1. Color photographs and color drawings are not accepted unless a petition filed under 37 CFR 1.84(a)(2) is granted. Any such petition must be accompanied by the appropriate fee set forth in 37 CFR 1.17(h), three sets of color drawings or color photographs, as appropriate, and, unless already present, an amendment to include the following language as the first paragraph of the brief description of the drawings section of the specification:

The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee.

Color photographs will be accepted if the conditions for accepting color drawings and black and white photographs have been satisfied. See 37 CFR 1.84(b)(2).

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, Applicant claims a system for performing two methods – a diagnostic method and a surgical method. It is therefore the opinion of the Examiner that the preamble of claim 1 should also be directed to a method. As to

claim 2, Applicant claims a system for performing a method and comprising a plurality of devices. It is therefore the opinion of the Examiner that the preamble of claim 2 should also be directed to a method. The same follows for all dependent claims 3-11.

Additionally, claim 1 recites the limitations: "the dimensions (ii)," "the location (iii)," "the central portion (iii)," "the jaw (i)," and "the remaining implants (iv)." There is insufficient antecedent basis for these limitations in the claim. Applicant also recites "said prosthesis (ix)" which has insufficient antecedent basis since Applicant previously claimed a "prosthetic." Additionally, it is unclear how the prosthesis can be mounted to the framework and the subject's jaw after the framework has been removed from the subject and casted (vi-ix). In regard to claim 6, Applicant claims "mounting the substrate in the subject's and...". It is the opinion of the Examiner that said claim should read: "mounting the substrate in the subject's jaw and...". Claim 11 recites the limitation "the substrate." There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knapp (US 6,672,870) in view of Cagna (US 5,885,078) and Lazarof (US

6,142,782). Knapp discloses a system for performing restorative dentistry on a subject comprising a diagnostic method comprising the steps of taking maxillary and mandibular casts of said subject (column 3, lines 34-35); placing a resin frame (10+14,20) over at least one of the casts (61) and wherein the dimensions of the frame substantially correspond to the dimensions of the casts (Figure 9) and wherein the frame further comprises a plurality of apertures (16); creating a hole in said resin frame (column 3, lines 52-55) wherein the location of the hole substantially corresponds to the central portion of the cast (Figure 9); and a surgical method comprising the steps of placing a first dental implant (44) in the jaw of the subject and wherein the implant is centrally located on the jaw (Figures 5-6 and 8); securing a sleeve (46) to the first implant; placing the frame over the sleeve and placing a plurality of dental implants in the subject's jaw using said apertures in the frame as a guide (column 4, line 20); removing said frame from the subject's mouth and securing sleeves to the implants (column 4, lines 53-57); placing the frame component back in the subject's mouth and securing the frame to said sleeves to create a framework (column 4, lines 57-62); mounting a dental prosthesis (22) to the framework (column 4, lines 65-67) and to the subject's jaw (Figure 6). Knapp, however, fails to disclose the sleeve that is secured to the implant is a wax sleeve or that the casting is of a metal alloy. As to claim 1, Lazarof teaches a dental implant assembly whereby a wax sleeve (114) is secured to the implant. Therefore it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to make the sleeve secured to the implant out of wax as taught by Lazarof in order to easily shape the wax portion to a desirable orientation, i.e. in the

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shape of a tooth. Furthermore as to claims 1 and 11, Cagna teaches a framework for a dental implant casted into a metal alloy. Therefore, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to cast the framework into a metal alloy as taught by Cagna in order to ensure the structure is maintained in a healthy state since it is disclosed that the human jaw bone biologically accepts implanted metallic structures and maintains such structures in a healthy state (column 2, lines 5-7). As to claim 10, Cagna discloses a framework for an implant-supported prosthesis comprising a resin bar (column 2, line 33).

4. Claims 2, 5 and 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knapp in view of Cagna. As to claim 2, Knapp discloses a system for performing restorative dentistry on a subject as previously described but fails to disclose the casting is a permanent substrate. Cagna teaches a framework for a dental implant casted into a permanent substrate – a metal alloy. Therefore, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to cast the framework into a metal alloy as taught by Cagna in order to ensure the structure is maintained in a healthy state since it is disclosed that the human jaw bone biologically accepts implanted metallic structures and maintains such structures in a healthy state (column 2, lines 5-7). As to claim 5, Knapp discloses that the frame is used as a template for mounting the implants (column 4, lines 47-57). As to claim 7, Cagna discloses dental implant analogs (20) that are stainless steel pegs. As to claim 8, Figures 8 and 9 of Knapp show the implants are implanted equidistant from one another.

5. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knapp in view of Cagna further in view of Driskell (US 3,950,850). Knapp and Cagna disclose the method for performing restorative dentistry as previously described and Knapp also discloses determining the available bone height within the mouth of the subject (column 4, lines 51-52), but both fail to disclose the step of determining the distance between the mandibular ridge and the maxillary occlusal plane within the mouth of the subject. Driskell, however, teaches a method for installing dental implants whereby the step of determining said distance is performed (column 4, lines 62-64). Therefore, it would have been obvious to one having ordinary skill in the art at the time of Applicant's invention to determine said distance in order to properly plan the size and positioning of the implant site to be created as taught by Driskell. As to claim 4, Knapp discloses the step of removing a predetermined amount of bone from the subject's jaw prior to implanting the implants (column 4, lines 46-56).

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Knapp in view of Cagna further in view of Sellers (US 4,986,753). Knapp and Cagna disclose the method for performing restorative dentistry as previously described but fail to disclose the step of attaching a wax occlusion rim to the substrate framework. Sellers, however, teaches a framework assembly for a dental implant system in which a wax occlusion rim is attached to the dental model (column 5, lines 15-17) to determine the vertical dimension of the patient's jaw in a centered relation. Therefore, it would have been

obvious to one having ordinary skill in the art at the time of Applicant's invention to attach a wax occlusion rim to the substrate in order to determine the relative position of the subject's jaw as taught by Sellers.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Knapp in view of Cagna and Lazarof. Knapp and Cagna disclose the method for performing restorative dentistry as previously described but fail to disclose the sleeve that is secured to the implant is a wax sleeve. Lazarof teaches a dental implant assembly whereby a wax sleeve (114) is secured to the implant. Therefore it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to make the sleeve secured to the implant out of wax as taught by Lazarof in order to easily shape the wax portion to a desirable orientation, i.e. in the shape of a tooth.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Please refer to included form PTO-892 for all additional pertinent prior art related to dental implants fastened to the jawbone.

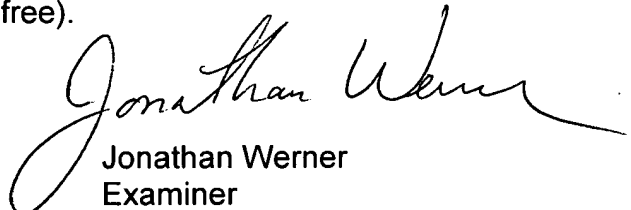
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan Werner whose telephone number is (571) 272-2767. The examiner can normally be reached on Monday-Friday.




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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jonathan Werner  
Examiner  
TC 3700

4/5/06

  
MELBA N. BUMGARNER  
PRIMARY EXAMINER